



Yakama Tribal Council
**4. Health, Employment, Welfare Recreation &
Youth Activities Committee**

Official Committee Action
Fiscal Year 2013

DATE: July 22, 2013

TOPIC: Request to be placed on August 6th Agenda to discuss Wapato High School Construction and Demolition Debris Illegal Dumping (3860 Ashue Rd)

ACTION REQUESTED: As the Potentially Responsible Parties (PRPs) for the clean-up of the illegally dumped debris at 3860 Ashue Road have failed to submit a clean-up proposal as required in the PRP meeting of March 18th, we request to be placed on the Tribal Council August 6th Agenda for an hour and a half (1 ½) to discuss EPA's proposed Removal Action on the Ashue Road/Wapato High School illegal dumping site. In addition, we request to accept EPA's offer of December 2012 to consult with Council on the proposed Removal Action and have EPA present for agenda.

Discussion will include:

- 1) Proposed Removal Action
- 2) Proposed complaint action to US Department of Education Office of Inspector General and the Washington State Auditor's Office Hotline reporting misuse of public dollars to improperly dispose of construction debris from the Wapato High School Site.
- 3) Proposed correspondence and/or meeting with Office of Superintendent of Public Instruction (a state funding agency for the school construction project)
- 4) Coordinated/joint media release on the clean-up effort

ACTION TAKEN:

DECISION: ☒ Approved ☐ Disapproved ☐ Tabled
TOTAL VOTE 3 2 For 0 Against 0 Abstained

COMMITTEE MEMBERS	COMMITTEE ACTIVITY			
	Roll Call	Motion	Second	Vote
Sam Jim, Sr. Chairman	Absent/Medical			
Warren Spencer Secretary	P			
Vivian George Member	Absent/Funeral			
Raymond Smartlowit Member	Absent/Funeral			
Ex-Officio GERALD LEWIS	P		GL	For

CERTIFICATION

Chairman and/or Secretary

Date

COMMITTEE ACTION NO. 131 - 2013

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MEMORANDUM

July 23, 2013

To: Sam Jim, Chairman, HEW Committee
Warren Spencer, Secretary
Vivian George, Member
Raymond Smartlowit, Member

Harry Smiskin, Chairman Executive Committee
Terry Goudy-Rambler, Vice-Chairman
Athena Sanchey, Secretary

Ruth Jim, Chairman, ROL Committee
Virgil Lewis, Secretary
Stella M. Washines, Member
JoDe Goudy, Member

Virgil Lewis, Chairman, L&O
Richard George, Secretary
Sam Jim, Member
Gerald Lewis, Member

From: Derald Ortloff, Manager, Facility Management
Loretta Zammarchi, YN Solid Waste

RE: Removal Action Proposed by EPA on the Ashue/Wapato High School Illegal Dumping

The PRPs identified on the Ashue/Wapato High School Illegal Dumping issue have failed to meet the April 16th deadline to present a proposed clean up action to EPA, Yakama Nation, and Yakama County on the Ashue/Wapato High School illegal dumping issue.

On April 16, 2013, EPA received a letter from Joyce, Ziker, Parkinson, attorneys for Groat Brothers, Inc. and T.W. Clark Construction, LLC, the "Contractor's Group". The letter stated that they did not haul any asbestos-containing material to 3960 Ashue Road, and that the delivering of clean recycle concrete and river rock to the property owner at the direction of Mid-Valley Recycling ("MVR") was a lawful activity. In short, they challenged the findings of EPA and challenge that the risk has not been fully assessed.

A letter was to have been drafted to the PRPs from the Yakama Nation OLC stating our dissatisfaction with their failure to comply with the deadline. Such a letter was not drafted.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

On July 16, 2013, a follow up conference call was convened to discuss next steps. Present on the phone call were: Calvin Terada and Jeffery Fowlow, EPA On Scene Coordinators; Grechen Schmidt, EPA Investigator, Office of Regional Counsel, EPA, Cliff Villa, Assistant Regional Counsel, EPA, Paul McIlrath, Senior Deputy Prosecuting Attorney, Yakima County, Councilmember and HEW Committee Vice Chair, Warren Spencer, Phillip Burdeau, Tribal Director, Derald Ortloff, YN Facility Management, Julio Carranza, YNOLC, Loretta Zammarchi, YN Solid Waste and Alfrieda Peters, YN Solid Waste.

The purpose of the meeting was to discuss EPA's response to the PRPs failure to comply with the deadline of April 16th, to produce a proposal that would include:

1. Agreement to remove all debris from the Gayton Property
2. Agreement to submit a draft work plan in 14 days. The work plan would have to be approved by all three jurisdictions – Yakama Nation, Yakima County and EPA.
3. Agreement to carry out/implement the work plan with agreed upon over site.
4. Agreement to maintain site security
5. Appointment of a single project manager.

Cliff Villa of the EPA in the initial meeting with the PRPs on February 26, 2013, stated to the PRPs that if no proposal was submitted by the PRPs then EPA would start spending money to conduct more assessments and the cost for the clean-up will begin to rise.

On the phone conference call, EPA informed the group that it has submitted an Action Memo requesting funds to conduct a Removal Action. The intent of the Removal Action is to:

- Mobilize EPA clean up staff for a 3 – 5 day assessment
- Use heavy equipment to remove concrete that came from the school
- Conduct sampling for and further surveying for asbestos
- Conduct air samples
- Determine how much risk is posed by the asbestos
- If, in the concrete removal effort, other hazardous materials are found, further sampling will be conducted.
- EPA will be seeking cost reimbursement for this mobilization.

Calvin clarified that under this plan, the scope does not fully clean up the site. All the material will not be taken away. Just the large concrete slabs. EPA does not have authority to clean up non-hazardous material. If however, other hazardous material is found, there would be another clean up.

Councilman Spencer stated that he could support this Removal Action.

EPA is awaiting a formal letter from the Nation supporting the Removal Action. OLC said that they would draft one.

Appropriate YN Programs will coordinate with Jeff for the onsite mobilization and joint media releases. These programs include YNEM, YN Water Code, YNSW, YN Tribal Police and Prosecutors Office and other involved jurisdictions.



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Calvin addressed Councilman Spencer. He asked if he thought that the Council would wish a consultation on the scope of work on the Removal Action. Councilman Spencer responded that he thought so and would request to be placed on the Council Agenda for August 6th.

The phone conference ended approximately 11:35 am.

A HEW Committee Action has been drafted requesting time on the August 6th Agenda.

Yakama Nation Solid Waste

PROPOSED MEDIA /OPEN LETTER TO THE COMMUNITY

Greetings Community Members,

This is an open letter from the Yakama Nation, to update you, the public, on the on-going issue of dumping of construction and demolition waste on lands within the Reservation boundary generated by the Wapato High School Construction Project. We wanted to let our community know, tribal and non-tribal, that the Yakama Nation, who has inherent authority within its boundaries to address illegal dumping, is actively working to resolve the problems generated by the parties involved in the construction, demolition and disposal issue.

These past months, you may have read in the Yakima Herald or viewed on local TV news, that a large volume, estimated at 4,500 cubic yards or over 350 dump truck loads, of improperly disposed construction debris was discovered by the Yakama Nation Solid Waste Program. By tracking down a series of leads, events and parties, it was discovered that the construction debris was coming from the recent demolition of the Wapato High School (WHS). The debris was being hauled to and dumped at a non-permitted site by contractors hired by the Wapato School District (WSD). The material disposed poses significant public health and environmental threats.

There are many things that are wrong about how the debris from the Wapato High School was handled.

To begin, why would anyone think that disposing of debris can be placed just anywhere? There are specific laws regulating where debris must be disposed. There are landfills for municipal solid waste, and also for construction and demolition waste. These landfills must meet environmental standards that safeguard the public and the environment from potential contamination. Improper disposal and illegal dumping pose significant threats to our public health and the environment.

As many of you know, illegal dumping is an enormous and serious issue on the Yakama Reservation. In the past four years, the Nation, working with Ecology and EPA, have spent close to \$1 million dollars cleaning up illegal dumps. However, the perception from outside the community is that tribal members are responsible for all the illegal dumping occurring on the Reservation. This perception is supported by a recent comment posted by an individual on the KIMA web site in response to their coverage of the WHS. The individual stated, "How can you tell what's a dump and what's just Wapato? The "natives" don't care. It is unbelievable how dirty and contaminated that whole area is. You can't blame those companies for illegal dumping"

Unfortunately the issue of the illegal dumping was lost on this particular individual. A "native" did not illegally dispose of the 4,500 cubic yards of debris, the school district did. An institution that is responsible for educating and teaching our youth and providing the foundation for strong social and moral habits. By disregarding and not insuring proper waste handling, the District plays right into blaming the victim, not the perpetrator.

The Yakama Nation has very specific laws, against illegal dumping. As you enter the Yakama Reservation you may have noticed the signs which state that "You Are Entering the Yakama

Reservation all Tribal Laws Enforced.” The perception that anything goes on the Reservation is erroneous. Our laws are in place to protect all the residents of the Yakama Reservation, tribal and non-Tribal. And our laws do apply to non-tribal members as well. If you are found violating our laws, you will be prosecuted. And we ask assistance from our community to report incidents such as illegal dumping to our Tribal Police.

Secondly, what makes the improper disposal of the construction debris from the WHS of great concern is that Wapato School District has asserted that it did not know that the debris was disposed of improperly. They were unaware of the situation until the Yakama Nation brought it to their attention. They also stated they could not be expected to know what their contractor was doing with the waste. The School District signed a construction and debris removal contract with TW Clark for \$956,500.00. The school district also hired a construction project manager to oversee the project for approximately \$100,000. We were also told that there were weekly construction meetings with the team to discuss project progress. Somewhere there was a lack of due diligence on part of the District to insure that the contractors were adhering to the signed contract requiring proper disposal. What makes the improper disposal of the construction debris of additional concern is we cannot be guaranteed that it is free of asbestos or other hazards. The records provided by the school district show that some of the material went to a permitted landfill, while other invoices (provided by the sub-contractor) show that material was disposed at the non-permitted site.

In addition, Wapato School District received federal impact dollars for the High School Modernization/ReConstruction Project. These are funds that are designed for impacted communities due to low income and other economic conditions. It is unconscionable that federal dollars were used to subvert proper disposal regulations and add to the illegal dumping problems on the Reservation.

Thirdly, of grave concern to the Tribe was the lack of cooperation by the School District and its contractors to follow Tribal Employment Rights Ordinance (TERO). The primary purpose of the TERO program is to enforce tribally enacted Indian Preference law to insure that Indian/Alaska Native people gain their rightful share to employment, training, contracting, subcontracting, and business opportunities on and near reservations and native villages.

A tribe’s authority to enact and enforce an Indian/Native employment preference law is grounded in its inherent sovereign powers of self-government. This legal doctrine is the most basic principle of Indian Laws and is supported by a host of Supreme Court decisions. These decisions have held that, “Inherent sovereign powers derive from the principle that certain powers do not necessarily come from delegated powers granted by express acts of Congress, but are inherent powers of a limited sovereign which have never been extinguished.”

Wapato School District awarded Architects West/Dull Olson Weekes Architects Team (AW/DOWA) the contract for the new Wapato High School. A memo was sent to Mr. Kent Chadwell of Architects West, asking him “being that this project takes place on the Yakama Nation Reservation we are assuming that there will be Tribal Preference on this project, is this correct? Mr. Chadwell’s response was, “This project is NOT on the reservation. There is no tribal preference requirement.” Mr. Chadwell also stated “the City of Wapato is not on the Yakima Nation Reservation. The Reservation does boarder the City limits”.

Mr. Chadwell's comments are wrong and most egregious. It is this lack of understanding and unwillingness to understand the rightful status of the Yakama Nation's authority that creates the atmosphere that allows the types of illegal dumping to occur. If the School District wantonly disregards the Nation's authority and fails to follow proper protocol, how do we expect others to do so? The school is a model standard for others to follow. AD/DOWA stated that they were proud to assist the Wapato School District with their mission statement: Educating today's children for a better tomorrow. We may need to remind Mr. Chadwell that today's children are Yakama.

The statement not to follow TERO because the city of Wapato is not on the Reservation provides our last issue of grave concern. The Wapato School District is entrusted with the teaching of our children. In 2005 the Washington State House Bill 1495 was passed which strongly encouraged school districts to adopt and teach tribal sovereignty and history in schools. To assist in this endeavor, a curriculum entitled, Washington's State Tribal Sovereignty Curriculum Initiative: Since Time Immemorial (STI) was developed. It is difficult to understand how a school district that fails to recognize that it is located on the Yakama Reservation and yet receives impact funding because it is on the Reservation, can not follow and apply the intent of the Since Time Immemorial (STI). The actions of the WSD with regards to the illegal dumping issue perpetuate the legacy of distrust and misunderstanding.

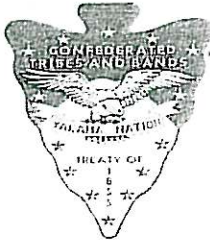
To date, the Wapato School District has refused to address the illegally dumped debris at the Ashue property. Rather than work with the Nation, EPA, Yakima County and the community, the School District has opted to hire an attorney to defend their actions. The School District, who is the owner of the dumped debris, had a million dollar abatement and demolition contract with its contractors, TW Clark. Once the Yakama Nation brought the illegal dumping issue to the attention of the School District, it was, and continues to be, in a position to right this wrong by holding the contractors to the terms of the contract. As it states in the contract, "...all applicable Federal/State Laws, City/County ordinances, and rules and regulations of all authorities having jurisdiction over project construction shall apply..." You and your contractor were to dispose of the material at a permitted landfill not in someone's backyard. For the School District to continue to declare that it is not responsible for the improper disposal of the debris, puts public dollars and public trust at risk.

We ask that the Wapato School District re-direct its efforts and promptly address the construction and demolition waste that your hired contractor disposed of illegally. We ask that the site be cleaned and the material disposed of properly. That includes insuring the public from any health and safety threats stemming from any removal practices. We ask that the School District respect and obey Tribal laws. We ask that the District fulfill the intent of the Since Time Immemorial Curriculum and recognize tribal sovereignty and inherent powers of self-governance. And finally work to build meaningful communication and dialogue between the District and the Yakama Nation.

Tribes have waited patiently for mutual respect and understanding for over 500 years. It is with great sincerity that we request that the Wapato School District address this issue in a timely fashion.

Yakama Nation Solid Waste

HEW COMMITTEE ACTION JULY 11, 2013



Yakama Tribal Council
**4. Health, Employment, Welfare Recreation &
Youth Activities Committee**
Official Committee Action
Fiscal Year 2013

DATE: July 11, 2013

TOPIC: Wapato High School Construction and Demolition Debris Illegal Dumping

ACTION REQUESTED: The YN Solid Waste Program is requesting approval to secure outside legal counsel to address the following action steps as outlined in the attached memo and below:

1. Draft a letter to the Potentially Responsible Parties, PRPs, stating the Nation's response to the parties missing the agreed upon action deadline.
2. Draft a committee action requesting permission to file a complaint with the US Department of Education Office of Inspector General, (OIG) Hotline, and the Washington State Auditor's Office Hotline reporting misuse of public dollar to improperly dispose of construction debris from the Wapato High School site.
3. Include in the committee action a request to draft a news release stating the Nation's concerns and recommended action to the media.
4. Work to secure a Government to Government Consultation with EPA and perhaps the US Department of Education, to address the Wapato High School issue.

ACTION TAKEN: Approved the request made by the YN Solid Waste program to seek outside Legal Counsel.

DECISION: (X) Approved () Disapproved () Tabled
TOTAL VOTE 4 3 For 0 Against 0 Abstained

COMMITTEE MEMBERS	COMMITTEE ACTIVITY			
	Roll Call	Motion	Second	Vote
Sam Jim, Sr. <i>Chairman</i>	<i>Present</i>			
Warren Spencer <i>Secretary</i>	<i>P</i>	<i>WS</i>		<i>For</i>
Vivian George <i>Member</i>	<i>Present</i>			<i>For</i>
Raymond Smartlowit <i>Member</i>			<i>Per</i>	<i>For</i>
<i>Ex-Officio</i>				

CERTIFICATION

Sam Jim, Sr.
Chairman and/or Secretary

7/12/13
Date

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MEMORANDUM

July 11, 2013

To: Sam Jim, Chairman, HEW Committee
Warren Spencer, Secretary
Vivian George, Member
Raymond Smartlowit, Member

From: Derald Ortloff, Manager, Facility Management
Loretta Zammarchi, YN Solid Waste

Re: Update Wapato High School Construction and Demolition Illegal Dumping and Next Steps

On June 3, 2013, the YN Solid Waste Advisory Committee met. Present were the HEW Committee Members: Sam Jim Sr., Warren Spencer Jr., Vivian Babs George, Raymond Smartlowit, Derald Ortloff, YN Facility Management, James Shike, YN Tribal Police, and Loretta Zammarchi, YNSW. Also present were, JoDe Goudy, Tribal Council Member, Joe Sexton, OLC, Kelsey Packinau, TERO and solid waste staff, Alfrieda Peters and Thomas Sam, Jr.

A major issue discussed at the meeting was the status of the Wapato High School.

Joe Sexton, OLC was to prepare four items:

1. Draft a letter to the Potentially Responsible Parties, PRPs, stating the Nation's response to the parties missing the agreed upon action deadline.
2. Draft a committee action requesting permission to file a complaint with the US Department of Education Office of Inspector General, (OIG) Hotline, and the Washington State Auditor's Office Hotline reporting misuse of public dollars to improperly dispose of construction debris from the Wapato High School site.
3. Include in the committee action a request to draft a news release stating the Nation's concerns and recommended action to the media.
4. Work to secure a Government to Government Consultation with EPA and perhaps the US Department of Education, to address the Wapato High School issue.

We were assured that the Solid Waste Program would receive these items to follow up on as Joe announced that his last day of employment with the Nation would be the next day, Friday, June 4th. Joe stated that the OLC would have these materials ready for us.



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We have made several attempts to meet with the Office of Legal Counsel, but to date no meeting has been set. We have not received call backs or a response as to the status of the three action items.

Therefore, the Solid Waste Program is requesting that we hire outside counsel to pursue the completion of the aforementioned tasks.

It is imperative that we address the PRP in a timely manner. In our efforts to work cooperatively with EPA and Yakama County, our response is needed.

We are submitting our request in the attached Committee Action.

Yakama Nation Solid Waste

UPDATE MEMORANDUMS AND CORRESPONDENCE



MEMORANDUM

April 19, 2013

To: Derald Ortloff, Facility Management
Joe Sexton, YNOLC
Ronna Washines, YN Chief Prosecutor

From: Loretta Zammarchi, Yakama Nation Solid Waste Planner

RE: Response from Wapato High School Illegal Dumping PRP

The following are notes taken during a phone conversation I had with Jeff Fowlow, EPA, on April 18, 2013. The purpose of the conversation was to update us on the recent response from the Potential Responsible Parties (PRPs) from the Wapato High School issue.

BACKGROUND - March 18th Meeting with the PRPs

On March 18th the Yakama Nation, EPA and Yakima County meet with the PRPs from the Wapato High School issue. (I have attached notes from the March 18th meeting with the PRPs).

The PRPs were to address the following:

Mr. Villa requested of the PLPs that they discuss amongst themselves and develop a specific proposal that would include:

1. Agreement to removal all debris from the Gayton Property
2. Agreement to submit a draft work plan in 14 days. The work plan would have to be approved by all three jurisdictions - Yakama Nation, Yakima County and EPA.
3. Agreement to carry out/implement the work plan with agreed upon over site.
4. Agreement to maintain site security.
5. Appointment of a single project manager.

April 2nd Deadline for Work Plan

April 2, was the requested deadline for the PRPs to submit a proposal. Below is an e-mail from Jeff on April 2, 2013 in which the PRPs requested additional time to develop their proposal. The deadline was extended for two more weeks – April 16th as the new deadline.

The law firm representing the PRP group has requested 2 additional weeks to come up with a work plan. We granted that request. Cliff said that he has been in contact with the law firm over a number of conversations and felt confident that they were serious about

conducting the project. Based on Cliff's sense that they plan to do the right thing and just need a couple more weeks to coordinate, I am comfortable granting additional time. This all happened last night and I saw that Cliff copied the Tribe's attorney (Joe) and the County's attorney (Paul) on an email granting their request. We knew a 2 week response time would be difficult because they would be dealing with so many parties. We had anticipated allowing for additional time. The purpose of the 2 week "limit" was to convey the scale of our time frame. This action needs attention in weeks, not years.

April 16th, New Deadline for Work Plan

I followed up with an e-mail to Jeff asking the status of the work plan. The following was the response I received from Jeff via e-mail.

Yes we did hear late last night and Cliff reviewed their response this morning. They are proposing to conduct more field assessment to determine if the asbestos at Ashue came from the school or not. I have a meeting with Calvin and Cliff at 1000 tomorrow to decide our next step.

CURRENT STATUS – April 18th - Phone Conversation with Jeff

I received a phone call from Jeff requesting that we talk to discuss his meeting with Calvin and Cliff and discuss the proposal that the PRPs submitted. The following are the notes from this phone conversation and are not exact quotes.

The PRPs did not submit a proposal that was outlined in the PRP meeting of March 18th, but rather submitted an alternative plan. Basically the PRP's assert that they disagree with the finding of EPA and challenge that the risk has not been full assessed.

- 1) It appears that the School is asserting that the indemnity clause in the contract that they have with their contractors on the project removes them from any responsibility for the cleanup. They feel that this is the contractor's responsibility.
- 2) It also appears that the contractors have organized themselves into a sub group to address the problem. They believe that the risk has not been fully assessed. The PRPs have sent a letter to Cliff stating their position.
- 3) Official Response from the PRPs – in in a letter (I haven't received a copy as of yet)
 - i) Disagree with your findings
 - ii) The school and contractors did not place the asbestos there (They are claiming that all the asbestos was abated correctly and what is there did not come from the school)
 - iii) We propose to do an assessment of our own
 - iv) They will come up with a plan once the assessment is complete.
- 4) What does this mean?
 - Unofficially, the contractor group has hired an environmental firm, Argus Pacific, to write a work plan to conduct a further assessment. Once the assessment is conducted, they will come up with a plan.



- The plan will be based on what they find in the assessment.
 - That could mean anything from walking away from the site if no asbestos shows up
 - To developing another proposal to clean the site.
- Conducting an assessment will cost them more money and time. Does nothing to cleanup of the site in a timely fashion.
- And even if an assessment is done, EPA, the Nation and the County have to review the findings, which include toxicology reports, and come up with a response. Potentially costing the Nation more money to secure expertise.
- Also, conducting another assessment does not address the illegal dumping issue; dumping without a permit; Clean Water Act violations; environmental justice issues; creating a contentious relationship with the Nation, etc...

THE “OTHER PROPOSAL” – Do you think they would accept a compromise?

Cliff met with the contractor’s attorney to discuss the proposal. In this meeting, the PRPs attorney made an “unofficial, what if compromise proposal”. The what if proposal could have:

- The contractors agree to take care of the big slabs of concrete. Remove them and have them tested. (Remember, the school is saying that no asbestos came from their construction site)
- Do more sampling and do a partial removal of the big concrete.
- If there is no asbestos, then leave the remaining river rock and broken concrete.

ACTION STEPS

Obviously there is a lot for us to discuss. It is proposed that:

- 1) Derald, Joe, Ronna, Loretta meet to discuss the above first amongst ourselves
- 2) Convene a phone conference call with EPA to discuss our reaction the proposals next week – April 22 -26. Jeff will e-mail me dates when they are available. We can then set a time and place for the call.
- 3) Discuss proposal with Yakama County
- 4) Draft recommendation to Tribal Council for action.

OTHER –

Some thoughts –

Conducting another assessment is costly, and is just that an assessment. It is not the physical act of cleaning up the site. Perhaps we can show that cleaning up the site and disposing of the material at a permitted asbestos landfill will be just as environmentally sound and efficient rather than dragging this out with another assessment.

I am trying to gather information on disposal fees for asbestos from surrounding landfills. I can ask Yakima County Code to gather their fees if the contractors were to utilize the Terrace Heights landfill. I will call Rabancco/Republic landfill and the Waste Connection Industrial landfill in Wasco, OR to get a quote. It will all be expensive, but there are certainly places to take this material. I just don't know if they even bothered to check and would rather spend the money fighting us.

The counter proposal does not address all the other violations that the illegal dumping raises. If the contractors want to talk compromise, I would think it would be important to look at the whole picture, i.e., "we'll clean it up if you don't prosecute us for illegal dumping". Now that is a compromise. A compromise is not, "we'll assess again, and then we'll let you know."

Please come prepared with your thoughts on how we should proceed.



JOYCE ZIKER
PARKINSON

COPY

Barry G. Ziker
Direct Dial: 206.957.5952
Email: bziker@jzplaw.com

April 16, 2013

HAND-DELIVERED

Clifford Villa
U.S. Environmental Protection Agency
Region 10
1200 6th Ave, Suite 900
Seattle, WA 98101-1128

Re: 3960 Ashue Road Asbestos Site

Dear Mr. Villa:

This letter is submitted on behalf of Groat Brothers, Inc. and T.W. Clark Construction, LLC. We have been advised that IRS Environmental of Washington, Inc. (collectively, with Groat Brothers, Inc. and T.W. Clark Construction, LLC, the "Contractor Group") and Wapato Public Schools, Fulcrum Environmental Consulting, and Ketchum Enterprises, Inc. (collectively, the "Owner's Group") have reviewed and are monitoring this response to the demand by the Environmental Protection Agency ("EPA") for a proposed work plan by April 16, 2013.

As discussed in greater detail below, the Contractor Group denies that any asbestos-containing material ("ACM") found at the 3960 Ashue Road location ("Property") originated from the Wapato High School demolition project ("Project"). Further, delivering clean recycled concrete and river rock to the Property owner at the direction of Mid-Valley Recycling ("MVR") and the Property owner was a lawful activity. For these reasons the Contractor Group submits the following response to the EPA's demand for a proposed work plan.

Enclosed with this packet is a disc containing the following Exhibits:

- Fulcrum Environmental Consulting Project Summary—Exhibit 1
- Relevant Project Specifications—Exhibit 2
- Groat Brothers Concrete Recycling Summary—Exhibit 3
- Groat Brothers Concrete Recycling Tickets—Exhibit 4
- Groat Brothers Concrete Recycling Invoices & Cancelled Checks—Exhibit 5
- Groat Brothers Impacted Concrete Disposal Summary—Exhibit 6
- Groat Brothers Impacted Concrete Disposal Tickets—Exhibit 7
- Groat Brothers Summary of all Exported Material—Exhibit 8
- Groat Brothers Salvage Metal Receipts—Exhibit 9
- Groat Brothers Landfill Tickets—Exhibit 10

Y903

- Google Earth Image of 3960 Ashue Rd. dated September 2, 2011—Exhibit 11
- Project Photographs—Exhibit 12

Factual Background

In July 2012, Groat Brothers, Inc. ("Groat") entered into an agreement with MVR to pay MVR to dispose of recycled concrete and river rock from the Project. The Project specifications allowed the concrete to be re-used as aggregate on the Project site if the contractor so chose (Part 1.7(f) Specifications Section 024116 & G.N. Northern Geotechnical Report—**Exhibit 2**). All other material, waste and refuse (hazardous and non-hazardous) were transported and lawfully disposed of or recycled at appropriate locations. Groat maintained detailed records of the source of all material removed from the Project site and the location to which it was delivered (see **Exhibits 3-10**). Pursuant to the agreement with MVR, Groat paid MVR for disposal of concrete at the rate of twenty-five dollars (\$25) per truck load (see **Exhibit 5**) at the location selected solely by MVR. MVR and/or the Property owner thereby took ownership of this concrete pursuant to an arrangement between MVR and the Property owners, the Gaytans. However, Groat was not privy to the agreement between MVR and the Gaytans.

MVR directed Groat to deliver clean concrete and river rock recovered from the Project directly to the Property. Groat understood that the Property owner intended to use the clean, recycled concrete as fill material, confirming Groat's understanding that delivering this recycled material to the Property was a lawful activity, just as the delivery of any clean fill material by a landscape contractor would be permissible. (Although Groat later learned that a permit for the volume of fill had not been secured, this was at all times the Property owner's or MVR's obligation and was never the obligation of Groat or any other Contractor Group member.

Based upon all available records and the inspection reports of multiple parties, the concrete materials at issue did not constitute ACM. Groat – and to Groat's knowledge IRS and T.W. Clark – followed the policies and protocols established by Fulcrum through each phase of the demolition Project (see **Exhibit 1**). Certain material was determined by Fulcrum to contain asbestos and IRS abated and disposed of the ACM. Fulcrum provided clearance paperwork to T.W. Clark prior to any structure demolition.

During the course of the Project, Fulcrum identified certain ACM that Groat was asked to transport for lawful disposal at a licensed facility. Groat followed all required protocols and transported these specific loads to a facility licensed to accept ACM in building materials. Each of these loads of ACM was specifically identified, handled and disposed of in compliance with applicable regulations (see **Exhibits 6 and 7**). As noted, the recycled concrete and river rock materials taken to the Property did not constitute ACM as all ACM had been identified and removed prior to demolition. This clean, recyclable material was transported to and deposited at the Property based upon the direction of MVR and the Gaytans.

EPA Claim

By letter dated March 8, 2013, you advised counsel for Groat of the following with respect to a release or threat of release of a hazardous substance as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"):

EPA has documented that such a release has occurred at the 3860 Ashue Road Asbestos Site ("Site") located in Wapato, Washington, where demolition debris from the modernization of the Wapato High School was illegally dumped. The debris has been found to contain measurable amounts of asbestos fibers, which constitute hazardous substances under CERCLA.

As discussed above and in additional detail below, there was no illegal dumping of any kind by Groat, and the materials brought to the Property were recyclable concrete and river rocks. Nor has EPA demonstrated that there is a release or threat of release of a hazardous substance.

The only investigation conducted at the Property of which we have been made aware is the Final Trip Report, Ashue Road Asbestos Site, Wapato, Washington, TDD: 12-10-0001 prepared by Ecology and Environment, Inc. and dated November 2012 ("Report"). The Report concludes that no asbestos was found in "suspect materials identified by the Yakama Nation" and further states that "air samples collected during EPA's visit were also non-detect for asbestos." The only asbestos at the Property was found in Microvac samples on construction debris that was identified by a Yakama Nation representative, and that Groat will confirm did not come from the Project.

Even with respect to the single fiber of asbestos found in each of the Microvac dust samples, there is no basis for liability under CERCLA. ASTM Standard D5755-09 states at Section 5 that microvacuum sampling "does not describe procedures or techniques required to evaluate...compliance with federal, state, or local regulations or statutes." It goes on to state that "At present, no relationship has been established between asbestos-containing dust as measured by this test method and potential human exposure to airborne asbestos.

In short, no ACM – i.e., a material containing more than one percent asbestos by weight (15 USC §2642(4)) – has been identified at the Property. There is, accordingly, no hazardous substance present at the Property based upon available data in any quantity to support liability under CERCLA, nor is there any nexus between the few fibers found in the Microvac samples and the material from the Project. One authority has opined that "...levels of asbestos in settled dust as determined by the Microvac technique are considered low if less than 1,000s/cm²."¹ Additionally, we are not aware of any other regulatory standard that would compel removal of the materials brought to the Property from the Project.

Figure 2 in the EPA's November 2012 investigation report is an aerial photograph of the Property taken from Google Earth. This satellite image clearly depicts significant waste materials on the Property. What is not clearly evident from the EPA's report is that the image

¹ Millette, J.R. and Hays, S.M., "Settled Asbestos Dust Sampling and Analysis, Lewis Publishers, 50, 1994.

itself was captured on September 2, 2011, more than eleven months **before** Groat first began transporting recycled concrete and river rock to the Property (see **Exhibit 11**; "imagery date: 9/2/2011"). Figure 2 clearly depicts fill material at the Property well before Groat began delivering recycled concrete. (Additionally, Groat personnel observed trucks unrelated to Groat or the Project bringing materials to the Property after Groat began depositing Project materials.)

The EPA report contains photographs and diagrams depicting the location of the EPA's tests. Photo 1 depicts a dozer owned by MVR used on a daily basis to level the fill at the Property and mix waste from other unknown locations with Groat's recycled concrete. Photographs 2, 3, and 5, depict round river rock and small concrete which was the last recycled material delivered by Groat from the Project. Groat's Concrete Recycling Summary (**Exhibit 6**) reflects that the final five days and five hundred yards of recycled material sent to the Property was round river rock that was screened at the Wapato High School.

Photographs 4, 6, and 9 depict air and Microvac samples being collected near debris piles that were **not** left by Groat. The debris includes PVC conduit mixed with large chunks of concrete. The Wapato High School main building was constructed in 1957 and the use of PVC is not consistent with the construction materials of the era. All conduits at the Wapato High School were steel and the water lines were also principally steel with some made of copper. The debris shown in photographs 4, 6 and 9 is inconsistent with the type of building materials present in the Wapato High School.

The debris pile also depicts wood and gypsum board intermixed with the concrete. Groat meticulously separated, stockpiled and disposed of the different types of Project debris. Groat's Export Material Summary (**Exhibit 8**) demonstrates the different categories of materials Groat removed from the Project. All materials except scrap metal and recycled concrete were classified as Construction, Demolition and Landscaping ("CDL") debris and were disposed of at the Wasco County Landfill (see **Exhibits 3-10**).

Finally, photographs 4, 6, 8 and 9 depict large chunks of concrete containing long sections of exposed rebar. Groat crunched the concrete from the Project into small pieces and harvested the rebar to sell as scrap metal (see **Exhibits 9 and 12**). Thus the debris depicted in photographs 4, 6, 8, and 9 depict debris from an unknown source, **not** recycled concrete deposited by Groat. Yet it was from these piles of debris that were clearly not from the Project that the EPA apparently took for its testing samples, including the Microvac samples.

Claims of Illegal Dumping of Solid Waste

The RCW 70.95.305

Yakima Health District requires Permit.

Washington does not have a licensing requirement for the recycle, reuse, or resale of concrete and river rock. Neither MVR nor the Gaytans were required to obtain a permit or license (other than a permit based upon the volume of fill, which the Gaytans apparently did not secure) to accept and stockpile Groat's recycled concrete. The Gaytans intended to voluntarily use it as fill material on the Property. Yakima County cited the Gaytans for a building code violation based upon Appendix J of the International Building Code 2006, as adopted by Yakima County. The Building Code requires a landowner to apply for and receive a grading permit for the placement

of fill in excess of 100 cubic yards. Yakima County's permit requirement is for the placement of fill, not the receipt or stockpiling of recycled concrete to be used as fill material.

The recycled concrete has also been incorrectly described as "solid waste." In *Littleton v. Whatcom County*, 121 Wash. App. 108 (2003), the Washington Court of Appeals gave definition to the term "waste" as it is used in the solid waste management statute. The court concluded that "waste" meant "something superfluous and incapable of reuse." *Id* at 113. If a product is not superfluous and is capable of being reused it is not "solid waste" as used in the statute.

There is no doubt that demolished concrete and river rock are capable of reuse. A quick internet search reveals that there are a significant number of companies that specialize in the purchase and re-sale of demolished concrete. See Renton Concrete Recyclers, Concrete Recyclers, Inc., Holroyd Green Plant, and Cadman. The LEED Green Building Rating System recognizes the use of recycled concrete in its point system. Both the Federal Highway Administration and the Washington State Department of Transportation recognize the use of recycled concrete as aggregate. See www.fhwa.dot.gov/pavement/recycling/rca.cfm and www.wsdot.wa.gov/Environment/HazMat/wasterecycle.htm. The plans and specifications for the demolition project specifically contemplated that the demolished concrete could, if elected by the contractor, be recycled and used at the school (see Exhibit 2). It is clear that the reuse of demolished concrete is not only recognized but encouraged by companies and government agencies alike.

In this case, the Gaytans used it as material to fill the depression on the Property. The EPA, Yakima County and Yakima Nation's continued description of the concrete as "solid waste" is factually and legally inaccurate. Further, any argument that the concrete must be removed from the location regardless of the alleged presence of asbestos is likewise factually and legally inaccurate.

Work Plan

The EPA concedes that the test results currently available do not reflect the presence of ACM or asbestos levels that are in violation of applicable laws or regulations. Further, there is no evidence to establish that the limited asbestos fibers from the Microvac samples originated from the Project.

Under CERCLA and its implementing regulations, investigation of known or suspected releases is a precursor to remedial action particularly where, as here, there is no evidence of the presence of any hazardous substance above any applicable cleanup standard. Groat has retained the services of Argus Pacific, Inc. of Seattle, Washington ("Argus") for this purpose. The extent to which other parties will participate in the investigation is yet to be determined. At this juncture, however, Argus has been asked to prepare an investigation work plan designed to test whether the material brought to the Property from the Project constitutes ACM. A draft work plan is not yet available, but will be submitted to EPA for review as soon as it is prepared. We do wish to continue to cooperate with EPA, and intend to work with EPA on the next steps and a resolution of this matter.

Clifford Villa
April 16, 2013
Page 6

The contents of this letter are based upon the current knowledge of Groat and T.W. Clark, and these parties expressly reserve the right to amend this response as additional information becomes known to such parties. If you have any questions or wish to discuss this response further, please contact either of the persons signing below.

Sincerely,

JOYCE ZIKER PARKINSON, PLLC
Attorneys for Groat Brothers, Inc.



Barry G. Ziker

DUNN & BLACK, P.S.
Attorney for Groat Brothers, Inc. and
T.W. Clark Construction, LLC



John C. Black

Enclosures

cc: Groat Brothers, Inc.
IRS Environmental of Washington, Inc.
Wapato Public Schools
Fulcrum Environmental Consulting
Ketchum Enterprises, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
REGIONAL COUNSEL

GENERAL NOTICE LETTER
URGENT LEGAL MATTER

Letter sent to PRPs

[Date]
[PRP Name]
[Address]
[City, State, Zip Code]

Re: General Notice Letter for the Ashue Road Asbestos Site, Wapato, Washington

Dear [PRP Name]:

Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency ("EPA") is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the 3860 Ashue Road Asbestos Site ("the Site") located in Wapato, Washington, where demolition debris from the modernization of the Wapato High School was illegally dumped. The debris has been found to contain measurable amounts of asbestos fibers, which constitute hazardous substances under CERCLA.

EPA is considering spending public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that [you or company name] may be a Potentially Responsible Party (PRP) under CERCLA for cleanup of the Site or costs EPA may incur in cleaning up the Site.

EPA would like to encourage communications among you, other PRPs, the Yakama Nation, Yakima County, and EPA in regards to addressing the problems at the Site. Toward that end, we have enclosed a list of names and addresses of PRPs to whom this letter is being sent. We are also inviting you to attend a meeting of all these parties on **March 18, 2013**. The meeting will be hosted by the Yakama Nation at 580 Fort Road, in Toppenish, Washington, with additional details to follow. In general, the purpose of this meeting is to provide you with information about the Site and to reach agreement on a path forward for removing the illegally disposed of material from the Site.

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You

may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/sbo>. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this Site, please contact Jeff Fowlow, On-Scene Coordinator at (206) 553-2751. For any legal questions, please contact Cliff Villa, Assistant Regional Counsel at (206) 553-1185. To confirm your participation in the meeting on March 18, 2013, please notify Cliff Villa at villa.clifford@epa.gov.

Thank you for your prompt attention to this matter and we hope to see you on March 18th.

Sincerely,

Chris D. Field
Program Manager
Emergency Management Program

Enclosures

cc: Joseph Sexton, Yakama Nation
Office of Legal Counsel

Paul McIlrath, Yakima County
Office of the Prosecuting Attorney

PRPs contact information

Simon and Sandra Gaytan
3860 Ashue Road
Wapato, WA 98951

Mid Valley Recycling Inc.
P.O. Box 700,
Wapato, WA 98951
Registered Agent:
Robin Cordova
P.O. Box 700
Wapato WA
98951

attn: Robert Ames
Attn: Rick Ames
Attn: Denny Ames

Groat Bros., Inc.
P.O. Box 1630,
Woodland WA 98674.
Registered Agent:
Lloyd L. Groat,
608 W. Scott Ave.,
Woodland, WA 98674

IRS Environmental of Washington Inc. Attn: Rob Reed
P.O. Box 15216,
Spokane Valley, WA 99215-5216
Registered Agent:
Robert Reed,
12415 E Trent,
Spokane Valley, WA 99215

T.W. Clark Construction LLC Attn: Scott Roundtree
1117 N Evergreen Rd #1,
Spokane, WA 99216
Registered Agent:
Clayton D. Linnell,
1117 N Evergreen Rd #1,
Spokane, WA 99216

Wapato Public Schools
Becky Imler, Superintendent
P.O. Box 38
Wapato, WA 98951
Registered Agent same as above

Ketchum Enterprises Inc. Attn: Milt Ketchum
33 S. 2nd Ave
Yakima, WA 98902
Registered Agent:
Jeffery J Baker
41 Yellow Brick Rd,
Trout Lake WA 98650

Fulcrum Environmental Consulting Attn: Peggy Williamson
406 N. 2nd St.



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

MEMORANDUM

March 21, 2013

To: Sam Jim, Chairman, HEW Committee
Warren Spencer, Secretary
Vivian George, Member
Raymond Smartlowit, Member

Harry Smiskin, Chairman Executive Committee
Terry Goudy-Rambler, Vice-Chairman
Athena Sanchey, Secretary

Ruth Jim, Chairman, ROL Committee
Virgil Lewis, Secretary
Stella M. Washines, Member
Rick Watlamet, Member

Virgil Lewis, Chairman, L&O
Richard George, Secretary
Sam Jim, Member
Gerald Lewis, Member

From: Derald Ortloff, Manager, Facility Management
Loretta Zammarchi, YN Solid Waste

Re: Wapato High School Construction and Demolition Illegal Dumping and Next Steps

Greetings,

The following is a brief update on the Ashue Road Asbestos/Wapato High School Disposal Meeting which took place on Monday, March 18th at Legends Casino. Please note these are not official minutes of the meeting but rather notes taken.

On February 26, 2013 Yakama Nation Tribal Programs, (Water Code, Environmental Management, Solid Waste, and Office of Legal Counsel) met with staff from EPA and Yakama County Code, in a collaborative effort to resolve the Wapato High School Dumping Issue.

It was agreed that EPA would issue a General Notice Letter to all identified Potential Liable Parties (PLPs) encouraging them to a meet with EPA, Yakima County and Yakama Nation to discuss problems at the Site.



Yakama Nation Solid Waste Program hosted the meeting, held on March 18, 2013 at Legends Casino, Patho Rooms I and II. The meeting ran from 1:00 pm till approximately 5:00 pm.

The purpose of the meeting was to provide the PLPs with information about the Site and to reach agreement on a path forward for removing the illegally disposed material from the Site.

On Monday, March 18th, 38 people attended the meeting. There were representatives and attorneys from all parties: the Wapato School District, the contractor and hauler for the project, the individuals who arranged for the demolition site, and the homeowners. Also present were representatives from EPA, Yakima County Code and Prosecuting Attorney, Tribal Solid Waste, Environmental Management, Water Code and TERO. Joe Sexton, YNOLC, was present representing the interest of the Yakama Nation. (The agenda and sign up sheet are attached)

Derald Ortloff convened the meeting with Yakama Nation Councilman, Warren Spencer at his side.

Cliff Villa, attorney for EPA, presented the ground rules for the meeting.

Grechen Schmidt, Investigator for EPA, presented the chronology of events pertaining to the illegal disposal and identifying the PLP and their roles.

Jeff Fowlow, EPA On-Site Scene Coordinator, presented a brief overview of the site assessment. Dave Saunders, Yakima County Code and Loretta Zammarchi, YN Solid Waste concurred on the assessment.

Mr. Villa, Mr. Sexton and Mr. McIlrath (Prosecuting Attorney for Yakima County) presented the regulatory framework and collaborative and concurrent jurisdictions. Mr. McIlrath stated that "we take our lead from the Nation. We are deeply integrated on this issue".

Mr. Villa requested of the PLPs that they discuss amongst themselves and develop a specific proposal that would include:

1. Agreement to removal all debris from the Gayton Property
2. Agreement to submit a draft work plan in 14 days. The work plan would have to be approved by all three jurisdictions - Yakama Nation, Yakima County and EPA.
3. Agreement to carry out/implement the work plan with agreed upon over site.
4. Agreement to maintain site security.
5. Appointment of a single project manager.

Mr. Villa called for the PLPs to begin their deliberation on the proposal. The government representatives left the room, with the agreement that the body would reconvene at 3:00 pm.



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As the time approached 3:00 pm, Mr. Villa was called out of the room with the government officials and presented with a question from the PLPs. Mr. Villa returned to the room with the waiting government officials and presented the question. The question posed by the PLPs was: if the parties (PLPs) agreed to excavate and remove the demolition waste that they believe to be from the high school, would the governments agree to them capping the site and leaving the remaining debris that appears not to be from the high school?

The question was discussed. It was the consensus of the government group that they could not agree to such a request. It would not be acceptable to remove the concrete and then cap the site on the assumption that there was no other contamination. The site would need to be sampled for contaminants.

At approximately 3:00 pm the government group reconvened with the PLPs to hear their proposal.

Again the question of capping the site came up.

Mr. Villa stated that the governments could not answer that question at this time. We would need to know what is under the debris. We would not release anyone of their liability because we don't know enough.

Mr. Villa stated that the group (YN, YC, EPA) would entertain a proposal that would have removal and sampling.

Mr. Villa stated that if no proposal is submitted by the PLPs then EPA would start spending money to do more assessments and the cost for clean up will begin to rise.

Councilman Spencer spoke. He stated that he wanted to let the people sitting at this table, the school district in particular, know that the Yakama Nation values its resources. He continued by stating the following: Water has great significance and value to us. You need to recognize that we are a treaty tribe; we are a government. We will stand and protect our resources. We won't accept a cap. We need the site sampled. Then we can determine if it is acceptable. We would like to remind you that we wouldn't be here if the Wapato School District didn't do what they did. But, we are glad to be made aware of this so we can begin to clean it up. (This is paraphrased)

Mr. Villa addressed questions from the PLPs. It was noted that the water table begins to rise by July. He then wrapped up the meeting by stating what is required and expected of the PLPs.

1. There needs to be a point of contact for the PLPs.
2. A draft work plan needs to be developed
3. The deadline for the work plan is April 2, 2013



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4. Jeff Fowlow will act as plan contact for EPA

The PLPs were welcomed to use the meeting room to continue their discussion.

The meeting was adjourned at approximately 4:00.

NEXT STEPS/ACTION STEPS

The Solid Waste Program will be in contact with Jeff Fowlow from EPA regarding the PLP's work plan.

Government attorneys will remain in contact and available for questions.

Once a plan is received all parties will review.

We will present plan for committee action.



John P. Ahlers
Direct: (206) 515-2226
Main: (206) 287-9900
Fax: (206) 287-9902
jahlers@ac-lawyers.com

January 7, 2013

RECEIVED

JAN 11 2013

YAKAMA NATION TRIBAL COUNCIL
CHAIRMAN
HARRY SMISKIN

Via First Class Mail

Harry Smiskin
Chairman
Confederated Tribes and Bands
Of the Yakama Nation
PO Box 151
Toppenish, WA 98948

RE: 3960 Ashue Road/Alleged Disposal of Solid Waste

Dear Mr. Smiskin:

This firm represents the Wapato School District ("District"). Your letter dated December 28, 2012 was referred to me for response.

The District requested that the Yakama Nation provide the District with specific regulations or statutes which the Nation asserts were violated by the District's independent contractor's alleged disposal of demolition debris at Ashue site. Your letter is devoid of any such detailed citations and thus, we presume that the Yakama Nation has no specifics to support its contentions.

We noted that your letter asserts that "asbestos-containing materials [were] illegally dumped on our Reservation." Your statement does not connect the District in any way to that allegation. Again, if asbestos-containing materials were illegally dumped on the Yakama Nation's reservation those are not in any manner associated with the District, since as you probably are aware, the asbestos at the old school was abated by licensed contractors and inspected by professional environmental consulting firms before the concrete was demolished and hauled off.

Finally, we are aware that test were done, however, we are unaware of the United States Environmental Protection Agency (EPA) tests that in any manner determined that District materials were illegally dumped or that those materials contained asbestos as you maintain in your letter. If tests or reports exist supporting your contention, please provide those to this office otherwise again, we will presume that these are uncorroborated allegations are hyperbole. The

January 7, 2013

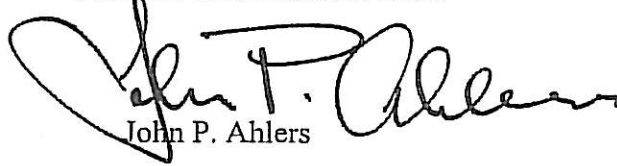
Page 2

contentions in your letter are serious and lack credible supporting backup and hence we can accord them little or no weight.

As far as the District is concerned, it is satisfied that it legally abated any asbestos and disposed of it at an appropriate site (not the Ashue road property) before its concrete demolition contractor was allowed to remove debris from the site. Any statements in your letter to the contrary are belied by consultants' reports and thorough documentation of the hazardous waste disposal that took place at the District's project site.

Very truly yours,

AHLERS & CRESSMAN PLLC

A handwritten signature in black ink, appearing to read "John P. Ahlers", is written over the printed name. The signature is fluid and cursive.

John P. Ahlers

JPA: grl

cc: Wapato School District

THANK YOU Legends Casino!

Wapato students are going to have increased opportunities for academic success thanks to the generosity of Legends Casino. Three schools in the District are recipients of several grants from Legends totalling more than \$9,000.

The Middle School received three of the grants that total \$4,000. They will help fund an anti-bullying program, STEM (Science, Technology, Engineering & Math) Activities and a unique academic/physical wellness program.

Camas Elementary School is the recipient of two grants totalling \$4,200. \$3,000 will be used for new playground equipment and \$1,200 will help purchase 2 communications systems for non-verbal students.

Finally Adams Elementary School received a grant for \$1,000. It will be used to acquire five Ipod Touches that will help students struggling with math.

The District very much appreciates those staff members who took the time and effort to apply for these grants and Legends Casino for funding these projects.

Middle School Legends Casino Grant Recipients



Ms. Acosta (R)--\$1,500 Grant



Ms. Carter (R)--\$1,500 Grant



Ms. Howell (R)--\$1,000 Grant

Adams Elementary Legends Casino Grant Recipient



Ms. Woodward & Mr. Peterson--\$1,000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

DEC 13 2012

The Honorable Harry Smiskin
Chairman
Yakama Nation Tribal Council
P.O. Box 151
Toppenish, Washington 98948

Dear Chairman Smiskin:

I have been advised by Jeffrey Fowlow, a member of my staff, that the U.S. Environmental Protection Agency has identified a release or threat of release of a hazardous substance into the environment near Wapato, Washington. An estimated 390 cubic yards of debris that may contain asbestos contamination, originating from the July 2012 demolition of Wapato High School, has been deposited at a residential property located at 3960 Ashue Road in Wapato. Asbestos is a hazardous substance under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

As far as we understand, prior to the demolition of the school, an abatement project had been conducted at the school to remove all known asbestos from the building. Due to concerns that the remaining demolition debris at the Ashue Road property may pose an airborne threat to public health, the EPA responded on October 5, 2012 to a request from Yakama Nation Solid Waste to assess the debris pile for additional asbestos. When on site, Mr. Fowlow met with representatives of the Yakama Nation and collected samples from the debris pile. Analytical results of the samples indicate the presence of asbestos in some of the samples collected.

The EPA recognizes its unique legal relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. The EPA has established a policy to have regular and meaningful consultation with Indian Tribal governments when making decisions on matters affecting their communities and resources. We would like to offer you the opportunity to consult with us regarding whether further assessment and/or cleanup needs to be conducted.

If you are interested in consulting with us on this matter, please reply to me at (206) 553-1847, or contact Calvin Terada, Manager, Emergency Response Unit, at (206) 553-4141, by January 15, 2013, and identify the Tribal contact we should work with to make the suitable arrangements. If you have technical questions regarding the site please contact Jeffrey Fowlow at (206) 553-2751.

Sincerely,

A handwritten signature in black ink, appearing to be "Richard Albright", written over a horizontal line.

Richard Albright, Director
Office of Environmental Cleanup

cc: Yakama Nation Solid Waste, Loretta Zammarchi



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 28, 2012

Becky Imler
Superintendent
Wapato Public Schools
212 W 3rd Street
P.O. Box 38
Wapato, WA 98951

Re: Improper and Dangers Disposal of Asbestos-Containing Hazardous Waste On Yakama Lands

Dear Ms. Imler,

I am in receipt of your letter to Mr. Derald Ortloff dated December 4, 2012 in which you arbitrarily demand a response from the Yakama Nation by December 28, 2012 on a very serious and potentially dangerous matter.

In short, it is not the Yakama Nation's responsibility to advise you at this point on the various laws and regulations your contractor and possibly the school district itself, violated in illegally dumping (or possibly directing the illegal dumping) of hazardous, asbestos-containing waste on Yakama lands. As I'm sure your legal counsel is aware, there are various statutes of limitation that go well beyond three weeks or even three months permitting aggrieved parties to determine which entities might be strictly liable, or liable under some other legal theory, and to pursue redress and justice on behalf of those parties injured due to reckless and/or negligent acts and omissions. We are continuing our ongoing investigations into the actions and omissions of both your entity and your contractor with respect to the asbestos-containing materials illegally dumped on our Reservation. We will notify you, if we determine it appropriate, when those investigations have been completed or when we have something further to communicate. For now, I'm confident you've been made aware of the United States Environmental Protection Agency's tests conclusively determining that the materials illegally dumped by your school district's contractor on the Yakama Reservation were indeed asbestos-containing materials. As I'm confident you're aware, respirable asbestos fibers are dangerous, and the fatal diseases those fibers cause have a long latency period that could exceed thirty years. Accordingly, I am hopeful you will take all measures possible to ensure the hazardous materials your contractor recklessly dumped without regard to a variety of laws and regulations promulgated by various jurisdictions are appropriately abated to ensure the safety of all people living in our community. Further, I respectfully request you keep our government informed of your actions regarding this unfortunate set of circumstances.

While our investigation proceeds, if you have any questions, please contact Yakama Nation Office of Legal Counsel at (509)865-7268, Ext. 6056.

Sincerely,

Harry Smiskin
Chairman, Yakama Nation Tribal Council